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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Application of MARK J. PERINA]	
Serial No.:	10/797,778]	BEFORE THE BOARD OF
]	PATENT APPEALS AND
]	INTERFERENCES
5 Filed:	March 10, 2004]	
Title:	HOLLOW STRUCTURAL]	Appeal No. _____
	MEMBER]	
]	
Art Unit.:	3635]	

APPELLANT'S APPEAL BRIEF

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Commissioner for Patents
Alexandria, VA 22313

Dear Sir:

REAL PARTY IN INTEREST

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The Appellant has assigned all of his rights to the invention to Valmont Industries, Inc.; therefore, the real party in interest is Valmont Industries, Inc.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to this case.

STATUS OF THE CLAIMS

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This is an appeal of the Examiner's final rejection of Claims 30-31. Claims 30 and 31 are independent claims.

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STATUS OF AMENDMENTS

1 The Examiner entered a final rejection of Claims 30 and 31 on January 28, 2008. Applicant filed Amendment After Final Rejection but the Examiner did not enter the Amendment.

SUMMARY OF CLAIMED SUBJECT MATTER

5 Independent Claim 1 is directed to a hollow, elongated, structural member wherein a plurality of elongated hollow pole sections are secured together in an end-to-end relationship. Each of the hollow pole sections comprise a plurality of longitudinally extending peripheral sections joined together. Each of the
10 peripheral sections have upper and lower edges and first and second side edges. Each of the peripheral sections have first and second vertically extending break lines formed therein adjacent the first and second side edges respectively to form longitudinally inwardly extending first and second side edge portions. Each of
15 the peripheral sections also have a plurality of spaced-apart longitudinally extending break lines formed therein between the first and second break lines to form a plurality of angled wall sections between the first and second break lines. Each of the edge portions of the peripheral sections are bolted together by bolt
20 members to form a hollow pole section. The angled wall sections immediately adjacent the first and second break lines of the adjacent peripheral sections define an externally presented general V-shape therebetween.

25 Independent Claim 31 is identical to Claim 30 except that the claim is directed to a wind turbine tower rather than a hollow, elongated structural

1 member. All of the limitations enumerated above with respect to Claim 30 are
found in Claim 31. Neither Claims 30 nor 31 include any means-plus-functions
pursuant to 35 U.S.C. 112(6).

5 GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Claims 30-31 were rejected under 35 U.S.C. 102(b) as being anticipated
by Schulz (2002987).

10 It is the Examiner's position that Schulz discloses a wind turbine tower
which is comprised of a plurality of elongated hollow pole sections (29, 30)
secured together in an end-to-end relationship. The Examiner also contends that
each of the hollow pole sections of Schulz comprise a plurality of longitudinally
extending peripheral sections joined together. Additionally, the Examiner
15 contends that each of the peripheral sections of Schulz have upper and lower
edges and first and second side edges. The Examiner further contends that
each of the peripheral sections of Schulz have first and second vertically
extending break lines (VBL) formed therein adjacent the first and second side
edges respectively to form longitudinally inwardly extending first and second
20 edge portions (EP). Further, the Examiner contends that each of the peripheral
sections of Schulz also have a plurality of spaced-apart longitudinally extending
break lines (LBL) formed therein between the first and second break lines to form
a plurality of angled wall sections between the first and second break lines.
Additionally, the Examiner contends that the edge portions of the peripheral
25 sections of Schulz are bolted together by bolt members to form a hollow pole

1 section and that the angled wall sections immediately adjacent the first and
2 second break lines of the adjacent peripheral sections define an externally
3 presented general V-shape therebetween.

4 ARGUMENT

5 (A) Whether Claims 30-31 are patentable under 35 U.S.C. 102(b) over Schulz
(2002987).

6 As this Board is well aware, in order for a prior art patent to anticipate a
7 claim, each and every element of the claimed invention be disclosed in a single
8 prior art reference or embodied in a single prior art reference. *In re Paulsen*, 30
9 F3rd 1475, 31 USPQ 2nd 1671, 1673 (Fed. Cir. 1994). This Board is also aware
10 that the elements disclosed in the prior art reference must be either inherent or
disclosed expressly and must be arranged as in the claim. *Richardson v. Suzuki*
Motor Co., 868 F2d 1226, 9 USPQ 2nd 1913 (Fed. Cir. 1989). The corollary of
11 the rule that absence from the reference of any claimed element negates
12 anticipation. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F2d 1565, 230 USPQ
13 81 (Fed. Cir. 1986).

14 With respect to the Examiner's final rejection, Appellant can agree that
15 Schulz does disclose a vertically extending break line (VBL) which is formed
16 adjacent each of the first and second side edges respectively to form
17 longitudinally inwardly extending first and second side edge portions (EP).
18 However, the Examiner in the final rejection did not point out how Schulz can
19 anticipate the limitation that each of the peripheral sections also have a plurality

1 of spaced-apart longitudinally extending break lines formed therein between the
first and second break lines to form a plurality of angled wall sections between
the first and second break lines. Fig. 18 of Schulz clearly shows that there are
no longitudinally extending break lines (LBL) formed between the break lines at
the side edges of the peripheral section. Accordingly, Schulz cannot anticipate
5 Claims 30 and 31.

10 Additionally, Claim 31 includes the limitation that the invention is a wind
turbine tower and there is no teaching whatsoever in Schulz that the structure
disclosed therein could be a wind turbine tower. Inasmuch as the preamble in
Claim 31 breaths life into the remainder of the claim, the preamble "a wind
turbine tower" is a limitation which is not taught by Schulz.

15 Accordingly, Schulz cannot possibly anticipate Claims 30 and 31 under 35
U.S.C. 102(b). Therefore, the Examiner's final rejection of Claims 30 and 31
should be reversed.

CONCLUSION

1 The foregoing has clearly shown that Claims 30 and 31 are not
anticipated by Schulz under 35 U.S.C. 102(b). Schulz does not teach each and
every limitation found in Claims 30 and 31. The Board is therefore respectfully
5 requested to reverse the Examiner's final rejection.

Respectfully submitted,



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CLAIMS APPENDIX

1 30. A hollow, elongated, structural member comprising:
a plurality of elongated hollow pole sections secured together in an end-to-end
relationship;
5 each of said hollow pole sections comprising a plurality of longitudinally
extending peripheral sections joined together;
each of said peripheral sections having upper and lower end edges and first and
second side edges;
10 each of said peripheral sections having first and second vertically extending
break lines formed therein adjacent said first and second side edges
respectively to form longitudinally inwardly extending first and second
edge portions;
15 each of said peripheral sections also having a plurality of spaced-apart
longitudinally extending break lines formed therein between said first and
second break lines to form a plurality of angled wall sections between said
first and second break lines;
said edge portions of said peripheral sections being bolted together by bolt
members to form a hollow pole section;
20 the angled wall sections immediately adjacent said first and second break lines of
said adjacent peripheral sections defining an externally presented general
V-shape therebetween.

25 31. A wind turbine tower, comprising:

a plurality of elongated hollow pole sections secured together in an end-to-end

1 relationship;

each of said hollow pole sections comprising a plurality of longitudinally
extending peripheral sections joined together;

5 each of said peripheral sections having upper and lower end edges and first and
second side edges;

each of said peripheral sections having first and second vertically extending
break lines formed therein adjacent said first and second side edges
respectively to form longitudinally inwardly extending first and second
10 edge portions;

each of said peripheral sections also having a plurality of spaced-apart
longitudinally extending break lines formed therein between said first and
second break lines to form a plurality of angled wall sections between said
15 first and second break lines;

said edge portions of said peripheral sections being bolted together by bolt
members to form a hollow pole section;

the angled wall sections immediately adjacent said first and second break lines of
said adjacent peripheral sections defining an externally presented general
20 V-shape therebetween.

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EVIDENCE APPENDIX

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N/A

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RELATED PROCEEDINGS INDEX

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NONE

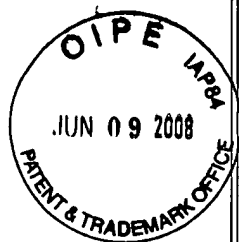
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CERTIFICATE OF MAILING

1 I hereby certify that the original of APPELLANT'S APPEAL BRIEF for
MARK J. PERINA, Serial No. 10/797,778, was mailed by first class mail, postage
prepaid, to the Mail Stop Appeal Briefs-Patent, Commissioner for Patents, PO
5 Box 1450, Alexandria, VA 22313-1450 on this 5 day of ^{June}~~May~~, 2008.

Thomte Patent Law Office, L.L.C.

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